IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

Crl.Rev.Pet.No. 928 of 1998()

CRA.15/1998 of ADDL.SESSIONS COURT, NORTH PARAVUR
CC.311/1996 of JUDL.MAGISTRATE OF FIRST CLASS, PERUMBAVOOR

.....

REVN. PETITIONER:

C.K. IBRAHIM, S/O.KOCHAHAMMED,
CHIRAYAKUDY VEEDU, KANDANTHARA KARA,
ALLAPRA (PROPRIETOR, EXCELLENT TIMBERS, PERUMBAVOOR)

BY ADV. SMT.SRRELETHA PUTHALATH

RESPONDENTS:

---

1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

2. M.E.ASSIS, SECRETARY,
TIMBER MERCHANTS' ASSOCIATION,
PERUMBAVOOR.

R2 BY ADV. SRI.P.B.JALEEL
R1 BY PUBLIC PROSECUTOR SRI C.M. KAMMAPPU.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.4615/98 IN CRL.R.P. 928/1998

DISMISSED.

24-5-2007. SD/- K.R.UDAYABHANU, JUDGE.

//TRUE COPY//

K.R. UDAYABHANU, J.

CRL.M.C. NO. 928 of 1998

Dated this the 24th day of May 2007

ORDER

The revision petitioner stands convicted for the offence under section 138 N.I.Act and sentenced to undergo simple imprisonment for one year. The prosecution version is that the accused/revision petitioner who is a member of the Perumbavoor Timber Merchants' Association borrowed a sum of Rs.25,000/- from the Association and towards the discharge of the same, he issued the impugned cheque for Rs.25,000/- which when presented got dishonoured for want of funds in the account of the accused. The prescribed statutory formalities for sending notice and instituting proceedings within the time limit have been complied with. The complainant Association is represented by the secretary.

2. The evidence adduced consisted of the testimony of PW-1 the Secretary, and Exts.P1 to P5. The contention of the accused/revision petitioner that the cheque was issued as security towards an unregistered chitty run by the Association for which he was a subscriber, was found against. DW-1, the treasurer of the complainant Association, summoned at the instance of the accused did not support the case.

3. The contention raised by the counsel for the revision petitioner before this court for the first time is that the complaint cannot be

sustained under section 138 N.I.Act as the complainant is not a person as contemplated under section 138 of the Act. According to the counsel, section 138 N.I.Act can be invoked only when a cheque was drawn by a person for payment of money to another person. According to the revision petitioner, he is also a member of the Association and cannot be distinguished from the complainant Association and hence, the proceedings cannot be sustained under section 138 N.I.Act.

4. I find that the above contention appears to be without merit as the complainant is not a juristic person contemplated as defined under section 11 of the IPC which definition has been opted for the Cr.P.C vide section 2(y) as well unless the context otherwise requires. So far as Section 138 N.I.Act is concerned, the payee or the holder in due course is empowered to initiate proceedings. In the instant case, the Association is represented by the Secretary. The Association is having a bank account and the cheque is drawn towards the account of the Association. The natural person representing the Association is the secretary. Hence, I find no legal infirmity in the proceedings initiated under section 138 by the

Secretary representing the Association. Hence, I find that the above contention raised cannot be upheld.

5. Considering the evidence adduced in the matter, and the findings of the courts below, I find that the execution of the cheque and the non payment stands proved.

6. In the circumstances, I find no reason to disturb the findings of the court below regarding the guilt of the accused is concerned. The same is confirmed.

7. All the same, considering the plea of the counsel, the sentence is modified to imprisonment till the rising of the court and to pay a compensation of Rs.25,000/- to the complainant with 12% interest from the date of filing of the complaint, and in default, to undergo simple imprisonment for three months. The revision petitioner is granted three months' time from today onwards to pay the compensation.

The revision petitioner shall appear before the JFCM, Perumbavoor on 24-8-2007 to receive the sentence.

The Crl.R.P is disposed of accordingly.

K.R. UDAYABHANU, JUDGE

kvm/-